



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/840,451	04/24/2001	Kuniaki Kawamura	199/49908	1890

23911 7590 02/28/2005  
CROWELL & MORING LLP  
INTELLECTUAL PROPERTY GROUP  
P.O. BOX 14300  
WASHINGTON, DC 20044-4300

EXAMINER

BORISSOV, IGOR N

ART UNIT	PAPER NUMBER
----------	--------------

3629

DATE MAILED: 02/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/840,451

Applicant(s)

KAWAMURA ET AL.

Examiner

Igor Borissov

Art Unit

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 13 and 15-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13 and 15-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

Amendment received on 1/18/2005 is acknowledged and entered. Claim 1-12 and 14 have previously been canceled. Claim 13 has been amended. Claims 13 and 15-19 are currently pending in the application.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 13-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mowery, Sr. et al. (US 5,752,654) (Mowery) in view of Nierlich et al. (US 2003/0158632) (Nierlich) and further in view of Aizawa (US 6,158,229).**

**Claim 13.** Mowery teaches a system for providing a supplemental heating, comprising a plurality of supplemental heaters (units) (90) (Fig. 1B) disposed at the premises, a controller and remote temperature monitoring sensors, wherein each supplemental heater is equipped with a sequencers and selectively controlled (activated or deactivated) by a controller based on the comparison of current temperature at the premises with a threshold temperature set points for actuating said heaters, and wherein various gradations of power are provided to each heater to enable ramped increase of larger portion of supplemental heater package when necessary (C. 6, L. 22-34, 53-66).

Mowery does not teach that said monitoring is provided over the Internet; and that said units can be leased. Also, Mowery does not specifically teach that for units leased by a user, the unit's lease charges are based on one of monitored variation in

Art Unit: 3629

the amount of heating and cooling used by the user, and a charge for maintenance of the leased units. Also, Mowery does not specifically teach portability of said units.

Nierlich teaches a system for monitoring and controlling energy distribution, comprising means for monitoring energy consumed by the user (including HVAC units) over the Internet, wherein the user is notified about power curtailment events in accordance with the variation of the load, and wherein the power curtailment events include providing a listing of load reduction/displacement items including HVAC units, said load reduction/displacement is conducted based on fluctuation (variation) of power usage including (when user load is reaching a predetermined projected level) [0037]; [0066]; [0074]. Furthermore, Nierlich teaches: charging the user for energy used, wherein charges reflect fluctuating (variations) power usage [0066].

Aizawa teaches a transportable (portable) heat exchanger equipped with an evaporative condenser, which is leased for operation (C. 10, L. 53-55; C. 9, L. 48-49), wherein leasing of said transportable (portable) heat exchanger indicates charging lease fee.

It would have been obvious to one having ordinary skill in the art to modify Mowery to include that said monitoring is provided over the Internet, as disclosed in Nierlich, because use of existing largest network would advantageously allow to avoid expenses for building a dedicated network. It would have been obvious to one having ordinary skill in the art to modify Mowery to include charging the user for energy used, as disclosed in Nierlich, because business needs money to operate. And it would have been obvious to one having ordinary skill in the art to modify Mowery and Nierlich to include that said charges reflect fluctuating (variations) power usage, as disclosed in Nierlich, because it would advantageously stimulated users to save energy. Furthermore, it would have been obvious to one having ordinary skill in the art to modify Mowery and Nierlich to include that said units can be transportable (portable) units and can be leased, as disclosed in Aizawa, because it would advantageously allow the users of said units to avoid any problems associated with repair and maintenance of said units.

**Claim 15.** Same reasoning as applied to claims 13.

**Claim 16.** Mowery teaches that activating of said units is based on the comparison of current temperature at the premises with a threshold temperature set points for actuating said heaters (C. 6, L. 22-34, 53-66). Language as to "*wherein the determination of whether to change at least one of a number of units provided to the user and a unit capacity of at least one of the units is based on the number of times a load of one of the plurality of units exceeds a predetermined load*" does not recite any structural limitation. So as claimed invention is directed to *a system*, said language is given no patentable weight.

MPEP 2106 (II) (C) states: "Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation."

**Claim 17.** Mowery teaches that activating of said units is based on the comparison of current temperature at the premises with a threshold temperature set points for actuating said heaters (C. 6, L. 22-34, 53-66). Language as to "*wherein the determination of whether to change at least one of a number of units provided to the user and a unit capacity of at least one of the units is based on the number of times a load of one of the plurality of units is below a predetermined load*" does not recite any structural limitation. So as claimed invention is directed to *a system*, said language is given no patentable weight.

MPEP 2106 (II) (C) states: "Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation."

**Claim 18.** Same reasoning as applied to claims 13.

**Claim 19.** Mowery teaches a system for providing a supplemental heating, comprising a plurality of supplemental heaters (units) (90) (Fig. 1B) disposed at the premises, a controller and remote temperature monitoring sensors, wherein each supplemental heater is equipped with a sequencers and selectively controlled (activated or deactivated) by a controller based on the comparison of current temperature at the premises with a threshold temperature set points for actuating said heaters, and

wherein various gradations of power are provided to each heater to enable ramped increase of larger portion of supplemental heater package when necessary (C. 6, L. 22-34, 53-66).

Mowery does not teach that said monitoring is provided over the Internet; and that each of said units includes an evaporative condenser. Also, Mowery does not specifically teach portability of said units.

Nierlich teaches a system for monitoring and controlling energy distribution, comprising means for monitoring energy consumed by the user (including HVAC units) over the Internet, wherein the user is notified about power curtailment events in accordance with the variation of the load, and wherein the power curtailment events include providing a listing of load reduction/displacement items including HVAC units, said load reduction/displacement is conducted based on fluctuation (variation) of power usage including (when user load is reaching a predetermined projected level) [0037]; [0066]; [0074].

Aizawa teaches a transportable (portable) heat exchanger which is equipped with an evaporative condenser (C. 10, L. 53-55; C. 9, L. 48-49).

It would have been obvious to one having ordinary skill in the art to modify Mowery to include that said monitoring is provided over the Internet, as disclosed in Nierlich, because use of existing largest network would advantageously allow to avoid expenses for building a dedicated network. Furthermore, it would have been obvious to one having ordinary skill in the art to modify Mowery and Nierlich to include that each of said units includes an evaporative condenser, as disclosed in Aizawa, because said "evaporative condenser" type of heating/cooling units are well known in the art and widely used. And it would have been obvious to one having ordinary skill in the art to modify Mowery, Nierlich and Aizawa to include that said units can be made as transportable (portable) units, as disclosed in Aizawa, because it would advantageously allow to lease said units to users so that said users could avoid any problems associated with repair and maintenance of said units.

Art Unit: 3629

***Response to Arguments***

Applicant's arguments with respect to claims 1, 3-7 and 10-46 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure (see form PTO-892).

Any inquiry concerning this communication should be directed to Igor Borissov at telephone number (703) 305-4649 before April 13, 2005, and (571) 272-6801 after that date.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist before April 13, 2005, whose telephone number is (703) 872-9306.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, John Weiss, can be reached at (703) 308-2702 before April 13, 2005, and (571) 272-6812 after that date.

Any response to this action should be mailed to:

***Commissioner of Patents and Trademarks***

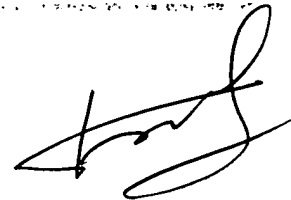
***Washington D.C. 20231***

or faxed to:

**(703) 872-9306** [Official communications; including After Final  
communications labeled "Box AF"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7<sup>th</sup> floor receptionist.

Igor Borissov  
Patent Examiner  
Art Unit 3629



IB

02/20/2005